

Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

CC:LM:F:LI:POSTF-136373-02  
HNAdams

date: July 11, 2002

to: Large & Mid Size Business Division  
Attn: Jay Goodman, Revenue Agent, Group 1569

from: Associate Area Counsel (Financial Services)  
CC:LM:F:LI

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subject: [REDACTED] - Extension of Statute of  
Limitations Issue

U.I.L. No. 6501.08-00

This memorandum responds to your request for assistance dated July 8, 2002. This memorandum should not be cited as precedent.

BACKGROUND

For purposes of this response, we understand the facts are as follows.<sup>1/</sup> For its year ended December 31, [REDACTED], [REDACTED] [REDACTED]. (EIN [REDACTED]) reported a loss which it elected to carryback to its years ended December 31, [REDACTED] and December 31, [REDACTED]. In connection with preparations for Joint Committee review,<sup>2/</sup> the Service has requested that the taxpayer waive the statutes of

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<sup>1</sup> Our understanding of the facts is based on information we have received from you.

<sup>2</sup> IRM Section 25.6.22.2.1 provides that it is the Service's practice to keep the statutory period of limitations open on all returns that the Joint Committee has under consideration, including returns recommended for survey action. It states that the examiner should make every effort to obtain consents extending the period of limitations on all returns (including carryback and claim returns) directly involved in a Joint Committee case where the statutory period will expire within: (a) 15 months from the time the case is submitted to the Technical Support Staff for preparation of the report to the Joint Committee reviewer, or (b) 6 months from the date the report is transmitted to the Joint Committee Program manager in Headquarters.

limitations for the assessment and collection of tax due for the years ended December 31, [REDACTED] and December 31, [REDACTED].<sup>3/</sup>

The taxpayer filed a petition for reorganization under bankruptcy Chapter 11 and the court established a "bar date" for creditors to file proofs of claim. The Service failed to file claims by the bar date. The taxpayer has indicated that it will only execute waivers if it receives assurance that they will not extend the bar date.

#### ISSUE

Would the execution of a Form 872 extend the bar date for the Service to file proofs of claim?

#### CONCLUSION

The execution of a Form 872 would have no impact on the bar date for the Service to file proofs of claim.

#### ANALYSIS

We understand that the term "bar date" refers to the deadline under 11 U.S.C. § 1111 and Rule 3003 of the Federal Rules of Bankruptcy Procedure for creditors to file proofs of claim.<sup>4/</sup> Such a date is set by a Bankruptcy Court pursuant to Rule 3003(c)(3) of the Federal Rules of Bankruptcy Procedure, which provides that:

The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed. Notwithstanding the expiration of such time, a proof of claim may be filed to the extent and under the conditions stated in Rule 3002(c)(2), (c)(3), and (c)(4).

In contrast to the bar date, the date that would be extended by the execution of a Form 872 is the date provided by Code section 6501 for the assessment of tax. A Form 872 is an agreement by the

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<sup>3</sup> The statute of limitations under Code section 6501(a) for the year ended December 31, [REDACTED] has already expired.

<sup>4</sup> The bar date for filing proofs of claim in Chapter 11 cases has been described as the mechanism for providing a debtor and its creditors with finality. Gulf States Exploration Co. v. Manville Forest Products Corp., 89 B.R. 358, 374 (Bankr. S.D.N.Y. 1988), aff'd, 99 B.R. 543 (S.D.N.Y. 1989), aff'd, 896 F.2d 1384 (2d Cir. 1990).

Service and a taxpayer pursuant to Code section 6501(c)(4) to extend the time for the assessment of tax. As the bar date and the date that would be extended by the execution of a Form 872 are separate dates set by separate authorities, we do not believe that the extension of one should result in the extension of the other. Moreover, we are unaware of any authority for the proposition that the execution of a Form 872 extending the time within which the Service may assess tax has an impact on the bar date.

As you have indicated that the taxpayer has requested assurances relating to this matter, we have included herewith a draft body of a letter that you might wish to provide to the taxpayer.

This opinion is based on the facts set forth herein. It might change if the facts are determined to be incorrect or if additional facts are developed. If the facts are determined to be incorrect or if additional facts are developed, this opinion should not be relied upon. You should be aware that, under routine procedures that have been established for opinions of this type, we have referred this memorandum to the Office of Chief Counsel for review. That review might result in modifications to the conclusions herein. We will inform you of the result of the review as soon as we hear from that office. In the meantime, the conclusions reached in this opinion should be considered to be only preliminary. If we can be of further assistance, you may call the undersigned at (516) 688-1737.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney client privilege. If

disclosure becomes necessary, please contact this office for our views.

ROLAND BARRAL  
Area Counsel (Financial  
Services:Manhattan)

By: HA N Adams III  
HALVOR N. ADAMS III  
Senior Attorney

Attachment:  
As stated

DRAFT TEXT

You have expressed a concern that the execution of a Form 872 might extend the bar date for the Service to file a proof of claim. We not believe such would be the case.

We understand that the term "bar date" refers to the deadline under 11 U.S.C. § 1111 and Rule 3003 of the Federal Rules of Bankruptcy Procedure for creditors to file proofs of claim. Such a date is set by a Bankruptcy Court pursuant to Rule 3003(c)(3) of the Federal Rules of Bankruptcy Procedure, which provides that:

The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed. Notwithstanding the expiration of such time, a proof of claim may be filed to the extent and under the conditions stated in Rule 3002(c)(2), (c)(3), and (c)(4).

In contrast to the bar date, the date that would be extended by the execution of a Form 872 is the date provided by Code section 6501 for the assessment of tax. A Form 872 is an agreement by the Service and a taxpayer pursuant to Code section 6501(c)(4) to extend the time for the assessment of tax. As the bar date and the date that would be extended by the execution of a Form 872 are separate dates set by separate authorities, we do not believe that the extension of one should result in the extension of the other. Moreover, we are unaware of any authority for the proposition that the execution of a Form 872 extending the time within which the Service may assess tax has an impact on the bar date.

You may contact me if you have any further questions about this matter.